



Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2015-0267]

Pipe Line Contractors Association; United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry; Application for Exemption

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of application for exemption; request for comments.

SUMMARY: FMCSA announces that it has received a joint application from the Pipe Line Contractors Association (PLCA) and the United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, AFL-CIO (UA), for an exemption from Parts 391, 392, 393, 395 and 396 of the Federal Motor Carrier Safety Regulations (FMCSRs). The exemption would be available to motor carriers and drivers operating commercial motor vehicles (CMV) weighing less than 15,000 pounds while engaged in pipeline-welding operations.

FMCSA requests public comment on this joint application for exemption.

DATES: Comments must be received on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER.]

ADDRESSES: You may submit comments bearing the Federal Docket Management System (FDMS) Docket ID, FMCSA-2015-0267 using any of the following methods:

- **Federal eRulemaking Portal:** Go to www.regulations.gov. Follow the on-line instructions for submitting comments.

- Mail: Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue, SE, West Building Ground Floor, Room W12-140, Washington, DC 20590-0001.
- Hand Delivery or Courier: West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE, Washington, DC, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal Holidays.
- Fax: 1-202-493-2251.

Each submission must include the Agency name and the docket number for this notice. Note that DOT posts all comments received without change to www.regulations.gov, including any personal information included in a comment. Please see the Privacy Act heading below.

Docket: For access to the docket to read background documents or comments, go to www.regulations.gov at any time or visit Room W12-140 on the ground level of the West Building, 1200 New Jersey Avenue, SE, Washington, DC, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays. The online FDMS is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgment page that appears after submitting comments on-line.

Privacy Act: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to www.regulations.gov, as described in the system of records notice (DOT/ALL-14 FDMS), which can be reviewed at www.dot.gov/privacy.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Schultz, Driver and Carrier Operations Division; Office of Carrier, Driver and Vehicle Safety Standards, FMCSA; Telephone: 202-366-4325. E-mail: MCPSD@dot.gov. If you have questions on viewing or submitting material to the docket, contact Docket Services, telephone (202) 366-9826.

SUPPLEMENTARY INFORMATION:

Background

FMCSA has authority under 49 U.S.C. 31136(e) and 31315 to grant exemptions from certain parts of the Federal Motor Carrier Safety Regulations. FMCSA must publish a notice of each exemption request in the **Federal Register** (49 CFR 381.315(a)). The Agency must provide the public an opportunity to inspect the information relevant to the application, including any safety analyses that have been conducted. The Agency must also provide an opportunity for public comment on the request.

The Agency reviews safety analyses and public comments submitted, and determines whether granting the exemption would likely achieve a level of safety equivalent to, or greater than, the level that would be achieved by the current regulations (49 CFR 381.305). The decision of the Agency must be published in the **Federal Register** (49 CFR 381.315(b)) with the reasons for denying or granting the application and, if granted, the name of the person or class of persons receiving the exemption, and the regulatory provision from which the exemption is granted. The notice must also specify the effective period and explain the terms and conditions of the exemption. The exemption may be renewed (49 CFR 381.300(b)), but only after the public is provided the opportunity to comment on the renewal.

Request for Exemption

UA and PLCA, the applicants, jointly seek exemption from part 391, “Qualifications of Drivers,” part 392, “Driving of Commercial Motor Vehicles,” part 393 “Parts and Accessories Necessary for Safe Operation,” and part 395, “Hours of Service of Drivers.” The regulations from which the applicants seek exemption apply only to drivers and motor carriers operating in interstate commerce. According to UA and PLCA, welders “live in various states and travel from job to job, often across state lines,” but the applicants did not otherwise address the question whether pipeline welders operate in interstate commerce. The complete application is available in the docket referred to at the beginning of this notice.

UA is a trade union whose membership includes approximately 3,500 welders who are employed by companies engaged in the construction, repair and maintenance of pipelines. The typical welder owns a heavy-duty pickup truck equipped with welding equipment and weighing less than 15,000 pounds that he or she drives to the work site. The pipeline-construction companies employing the drivers are members of PLCA, a trade association. According to the joint application for exemption, pipeline contractors typically hire 10 to 12 welders for a specific location and the employment usually lasts 4 to 6 weeks. PLCA states that its contractors were involved in approximately 500 such projects in 2014.

For many welders, the truck is the sole vehicle they have; they use it for personal errands and other everyday use when they are not on the job. The applicants state that the pipeline contractor hiring the welder enters into a lease for use of the truck for the period of the welder’s employment. It also agrees to pay an hourly fee for the time during which the welding equipment is actually in use.

Pipeline projects are typically located in remote areas served by right-of-ways that are not open to the public. As described in the application, at the beginning of the day, welders typically drive their welding vehicle to a prearranged “assembly point” that is usually about 10 miles from the pipeline right of way. After driving their vehicle 10 miles on public roads, welders enter the pipeline right-of-way at the project site and do not usually return to the public roads until the end of the workday. The applicants state that even the largest pipeline projects do not exceed 100 miles in length. The typical workday for a welder includes significant “waiting time” in the remote area because welders often have to wait for other work to be completed before they can weld. Welders typically work 10 hours a day, 6 days a week.

The FMCSRs place responsibility upon motor carriers to ensure the safety of the vehicles they place into commerce. The applicants state that it is not practical for the pipeline contractors to be responsible for inspection of the welding-vehicles because the vehicles remain under control of the welders at all times. They cite terms of the collective bargaining agreement requiring the welders to maintain their vehicle in safe condition, and point out that PLCA provides safety training to its members and their drivers. They also contend that the FMCSRs should not apply to the operation of the welding CMVs because these vehicles must pass state inspections applicable to passenger vehicles.

The FMCSRs place various responsibilities upon motor carriers relative to the qualifications and health of the drivers it permits to operate CMVs in interstate commerce. The applicants contend that because pipeline-construction companies hire welders temporarily – usually for 6 weeks or less – it is not practical for them to comply with regulatory requirements pertaining to driver qualification files and driver hours of

service. Pipeline-welders are often also motor carriers as that term is defined by the FMCSRs. The welders assert that it is not practical for them to comply with the FMCSRs because they are sole proprietors and it is too taxing for them to keep up with all the requirements of the FMCSRs. They further contend that welding CMVs are seldom on public roads and that “DOT officials and officers” apply truck safety rules inconsistently when they encounter welding vehicles on public roads.

Request for Comments

In accordance with 49 U.S.C. 31136(e) and 31315(b)(4), FMCSA requests public comment on the joint application of UA and the PLCA for exemption from part 391, “Qualifications of Drivers,” part 392, “Driving of Commercial Motor Vehicles,” part 393 “Parts and Accessories Necessary for Safe Operation,” and part 395, “Hours of Service of drivers.” The Agency will consider all comments received by close of business on [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER.]. Comments will be available for examination in the docket at the location listed under the **ADDRESSES** section of this notice

Issued on: August 28, 2015.

Larry W. Minor,
Associate Administrator for Policy.

[FR Doc. 2015-21893 Filed: 9/2/2015 08:45 am; Publication Date: 9/3/2015]